FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 577/2004
(*Sau.Nirmala w/o Ramkrushna Alone* **VERSUS** *Vasant Pandurang Dhope* **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.
DATE : 9th July, 2007.

Though this Court did not find any substantial question of law involved in this Second Appeal, this Court had issued notice of final disposal to the respondent only on a request made by the counsel for the appellant to see whether the matter which pertains to the right of way could be settled between the parties. However, none had put in appearance on behalf of the sole respondent who is served. In view of the aforesaid fact, the settlement as suggested by the counsel for the appellant would not be possible. It would now be necessary to consider the Second Appeal for admission.

The appellant is the original defendant. The plaintiff had filed a suit against the defendant for grant of mandatory and permanent injunction. According to the

plaintiff, the defendant had constructed a latrine, a bathroom and a staircase on the way which was used by the plaintiff as well as his predecessor in title. It was the plaintiff's case that the construction made by the defendant was causing great nuisance to the plaintiff and the same was made without seeking prior permission from the Municipal Council, Karanja.

The defendant denied the claim of the plaintiff and further pleaded that the plaintiff took his two wheeler from the disputed way and thus caused nuisance to the defendant. It was the defendant's case that the privacy of the defendant was disturbed in view of the aforesaid fact. The defendant, therefore, claimed permanent injunction restraining the plaintiff from taking his scooter or vehicle from the disputed way.

The trial Court held that the plaintiff had proved that the defendant had made encroachment and carried out illegal construction on the suit way. The Court further held that the defendant had failed to prove that the plaintiff was causing nuisance by taking his scooter to the

suit way. The trial Court consequently granted the relief of mandatory and permanent injunction in favour of the plaintiff and dismissed the counter claim filed by the defendant. The defendant was directed to remove the wooden staircase and the construction made by the defendant in the suit lane. The appeal filed by the defendant against the judgment and decree passed by the trial Court was also dismissed. The defendant has preferred this Second Appeal against the judgment and decree passed by the trial as well as the appellate Court.

I have perused the judgments passed by the trial and the appellate Court. Both the Courts have properly appreciated the evidence tendered by the parties on record, to record the findings of fact. The findings of fact recorded by the Courts do not give rise to any substantial question of law. The Second Appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE